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REMARKS

This Amendment responds to the office action mailed on September 14, 2006. Reconsideration is respectfully requested.

Objection to the Specification

In the office action, the specification was objected to because the abstract included 152 words. By this Amendment, the abstract is amended to reduce the number of words below 150.

Claim Objections

Objections to the claims were made in the office action because of the occurrence of two claims numbered 25 and because of an informality in claim 29. Claim 29 has been amended, as recommended. The second occurrence of claim 25 has been cancelled and reinstated as new claim 32.

Claim Rejections – 35 USC § 112

Claims 25B (new claim 32) and 26 have been rejected under 35 USC § 112 because of insufficient antecedent basis. The dependency of these claims has been amended, as suggested, to correct this deficiency.

Claim Rejections – 35 USC § 101

Claims 12-14, 19, 21-23 and 29-31 stand rejected under 35 USC § 101 as lacking patentable utility. In response, independent claims 12 and 29 have been amended to recite the additional limitation of controlling power consumption or acoustic gain of the hearing instrument based on the determination of whether the hearing instrument is inserted into or removed from the ear canal. Independent claim 29 has been amended to add the limitation of generating an indication of whether the seal is acceptable or unacceptable. Reconsideration is requested in light of these amendments.

Claim Rejections - 35 USC §§ 102/103

Claims 1-31 stand rejected under 35 USC §§ 102(b) and/or 103(a). Reconsideration is respectfully requested in light of the amendments to the independent claims. The independent claims have been amended to specify that the hearing instrument include a microphone that is positioned to receive sound from inside of an occluded ear canal (or sealed ear in claim 29). For example in claim 1, the radiated acoustic energy received by this in-ear microphone is compared to the acoustic energy generated by a first acoustic transducer (e.g., the hearing instrument speaker) to detect whether the hearing instrument is inserted into or removed from the ear canal. The positioning of the microphone within the ear canal makes this operation practical because the characteristics of the sound being generated by the hearing instrument and directed into the user's ear can be monitored while the device is in the user's ear. For instance, as explained in the specification, by placing a microphone inside the sealed ear cavity, the frequency response can be measured as the loudspeaker is operating. None of the cited references include or suggest the use of an in-ear microphone to achieve the operations recited in the claims. The applicant therefore submits that claims 1-32 are patentably distinct from the cited reference and are in condition for allowance.

Conclusion

For at least the reasons set forth above, the Applicants submit that claims 1-32 are in condition for allowance, and allowance is respectfully requested.

Respectfully submitted,

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